



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 10<sup>th</sup> of March, 1998

Served: March 16, 1998

Application of

**ANTONOV DESIGN BUREAU**

for an exemption under 49 U.S.C. 40109(g)

Docket OST 98-3568

**ORDER CONFIRMING EXEMPTION**

**Summary**

In this order we confirm our oral action of March 2, 1998, granting Antonov Design Bureau, a foreign air carrier of Ukraine, an exemption to carry emergency cabotage traffic, consisting of outsized aircraft components, between Wichita/McConnell AFB, Kansas, and Seattle/Boeing Field, Washington.

**Application**

By application filed February 27, 1998, Antonov requested an emergency exemption pursuant to 49 U.S.C. 40109(g) to permit it to operate one one-way cargo charter flight between Wichita/McConnell AFB, Kansas, and Seattle/Boeing Field, Washington, on or about March 3, 1998. Antonov proposed to operate the flight, using an AN-124 aircraft, on behalf of the Boeing Commercial Airplane Group, to transport outsized thrust reverser parts and related equipment for B-777 and other Boeing aircraft.

In support of its request, Antonov stated that Boeing's thrust reverser manufacturing lines were working around the clock to compensate for material shortages and production delays; that the components involved in this application would not be ready for shipment until March 3; and that, given Boeing's aircraft production schedules, there was insufficient time to ship them by surface means. It stated that delivery by air was thus necessary to avoid assembly and production delays and hardship to Boeing and its customers, and that

transportation on U.S. carrier aircraft was not possible. Antonov attached to its application a letter from the Boeing Commercial Airplane Group confirming its characterization of the situation and supporting its request.

## **Answers**

Antonov served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Antonov.

## **Statutory Standards**

Under 49 U.S.C. section 40109(g), we may authorize a foreign air carrier to carry commercial traffic between U.S. points (i.e., cabotage traffic) under limited circumstances. Specifically, we must find that the authority is required in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business the traffic cannot be accommodated by U.S. carriers holding certificates under 49 U.S.C. section 41102; that all possible efforts have been made to place the traffic on U.S. carriers; and that the transportation is necessary to avoid undue hardship to the traffic involved (an additional required finding, concerning emergency transportation during labor disputes, is not relevant here).<sup>1</sup>

## **Decision**

On March 2, 1998, we orally granted Antonov's application. We confirm that action here. We found that the application met all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest.<sup>2</sup>

We were persuaded that the unanticipated material and production delays faced by Boeing in manufacturing its thrust reverser components, and the fact that these components, once manufactured, could not be transported by surface to meet required assembly schedules, constituted an emergency created by unusual circumstances not arising in the normal course of business. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of this request would prevent undue hardship to Boeing.

In view of the above, we found that immediate action on this application was required; that our action met the relevant criteria of 49 U.S.C. 40109(g) and was required in the public

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<sup>1</sup> For examples of earlier grants of authority of this type, *see* Orders 97-9-28 and 97-5-8.

<sup>2</sup> We also found the applicant qualified to perform the operations at issue here. We have previously found Antonov Design Bureau qualified to conduct charter operations using its AN-124 aircraft (*see* Order 98-2-7).

interest; and that our action did not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

**ACCORDINGLY,**

1. Pursuant to section 40109(g) of Title 49 of the U.S. Code, we confirm our oral action of March 2, 1998, granting Antonov Design Bureau authority to operate one one-way emergency cabotage cargo charter flight between Wichita/McConnell AFB, Kansas, and Seattle/Boeing Field, Washington, during the period March 3-6, 1998, using an AN-124 aircraft, on behalf of the Boeing Commercial Airplane Group, to transport thrust reverser parts and related equipment for B-777 and other Boeing aircraft;
2. The grant of this authority was made subject to the conditions of Appendix A, and to the condition that Antonov Design Bureau comply with an FAA-approved flight routing for the authorized operation;
3. To the extent not granted, we deny Antonov Design Bureau's application in this Docket;
4. We may amend or revoke this order at any time and without hearing; and
5. We will serve this order on Antonov Design Bureau and the Federal Aviation Administration (AFS-200).

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation and  
International Affairs

(SEAL)

Attachment

*An electronic version of this document is available on the World Wide Web at:  
<http://dms.dot.gov/general/orders/aviation.html>.*

**CONDITIONS OF AUTHORITY**

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
  - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
  - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).